

IN THE MATTER OF	:	BEFORE THE
OWEN KELLY,	:	
CARRIGAN HOMES, INC.	:	HOWARD COUNTY
Appellant	:	BOARD OF APPEALS
vs.	:	
DEPARTMENT OF PLANNING	:	BA Case No. 621-D
AND ZONING, HOWARD COUNTY	:	
MARYLAND	:	

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DECISION AND ORDER

On May 15, 2008, the Board of Appeals convened to hear the appeal of Owen Kelly, Carrigan Homes, Inc. (the "Appellant"). The Appellant is appealing a Decision and Order of the Department of Planning and Zoning ("DPZ") in Administrative Adjustment Case No. 07-22, dated September 27, 2007, denying an administrative adjustment to reduce the 50-foot front setback from a public road right-of-way to 45 feet for a new dwelling in an R-20 (Residential-Single) Zoning District. The appeal is filed pursuant to Section 100.F.3 of the Howard County Zoning Regulations (the "Regulations").

Board members Albert Hayes, James Walsh, Maurice Simpkins, Kevin Doyle and Michelle James were present at the hearing and Chairman Albert Hayes presided. The Board members indicated that they had viewed the property as required by the Zoning Regulations. Notice of the hearing was advertised and posted as required by the Howard County Code. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

Prior to the introduction of testimony, the following items were incorporated into the record by reference:

1. The Howard County Code;

2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The Subdivision and Land Development Regulations;
5. The General Plan for Howard County;
6. The Petition and Administrative Adjustment Plans submitted by Petitioner.

Richard Talkin, Esquire, represented the Appellant. Thomas McElroy and Beth Kelly testified on behalf of the Appellant. Nearby property owners Eugene Rutter and Susan Flajnik testified about their concerns with the new dwelling.

Section 100.F.3 of the Regulations provides that appeals of administrative adjustment decisions be heard on a *de novo* basis. Section 100.F.1 of the Regulations provides that an administrative adjustment is subject to the same standards applicable to variances granted by the Board of Appeals under Section 130.B.2 of the Regulations.

During the hearing, the following items were introduced as exhibits:

1. Petition and Administrative Adjustment Plans;
2. Photographs of the subject site submitted by DPZ;
3. Appellant's Exhibits 1-8.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The Appellant is the builder of the dwelling on the subject property, which Creighton Northrop, III owns. It is located on the west side of Spring Meadow Drive about 1,500 feet south of Frederick Road and west of Chatham Road and is also known as 3746 Spring

Meadow Drive (the "Property"). The Property is referenced on Tax Map 24, Block 10, as Parcel 1108 and Lot 48.

2. The .60-acre Property is located in an R-20 Zoning District and is irregularly shaped. The lot is more than 200 feet deep with approximately 165 feet of road frontage and narrowing to approximately 70 feet in width at the rear.

3. Access to the Property is gained from a driveway off Spring Meadow Drive and accesses the attached garage on the south side of the dwelling.

4. All vicinal properties are located in the same subdivision and are also zoned R-20.

5. Thomas McElroy, an engineer with the RBA Engineering Group, testified that Carrigan Homes hired his firm to perform engineering services for the construction of a new dwelling. During the construction of the new dwelling, the stakeout for the construction resulted in the foundation being placed approximately five feet closer to the street right-of-way than permitted. The front of the garage encroaches five feet into the front setback which results in an encroachment of an approximately 400 square foot rectangular portion of the garage. On behalf of the Appellant, Mr. McElroy requests an Administrative Adjustment from Section 108.D.4.b.(1)(a)(ii) of the Howard County Zoning Regulations to reduce the 50 foot front setback from a public road right-of-way to 45 feet for a new dwelling.

6. Mr. McElroy stated that the house is situated on a curve in the road and the encroachment is not highly visible and creates a smooth transition with existing houses in the neighborhood. The Site Development Plan (Appellants Exhibit # 7) indicates some areas of steep slopes to the rear and northerly side of the house, an area of floodplain and stream to the rear, and a utility easement to the rear and north side. Mr. McElroy stated that the above-mentioned constraints severely limit the building envelope of the Property for the purposes of

situating a typical R-20 home. Appellant's Exhibit #3, "Lot Tabulation", corroborates the disproportionate impact the constraints have upon the subject Property's building envelope when compared with the surrounding properties.

7. Eugene Rutter and Susan Flajnik testified that they both would like to see this home completed.

CONCLUSIONS OF LAW

1. The irregular shape of the Property in combination with the slopes, flood plain and stream on the Property are unique physical conditions peculiar to the particular lot that cause the Petitioner practical difficulties in complying strictly with the setback requirement for properties within the R-20 zoning district, in accordance with Section 130.B.2.a.(1).

2. The residence would not alter the residential character of the Property or neighborhood and would not be out of character with vicinal properties. The encroachment will not be readily noticeable from roadways, and would not alter the essential character of the neighborhood or district in which the property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in compliance with Section 130.B.2.a.(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the irregular shape of the Property, the slopes, floodplain and stream to the rear of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

4. The proposed dwelling is of a reasonable size and was chosen to fit within the available building envelope to the greatest extent possible. The requested encroachment of five feet into the front setback is the minimum administrative adjustment necessary to afford relief to the Petitioner, in accordance with Section 130.B.2.a.(4).


ORDER

Based upon the foregoing, it is this 12th day of June, 2008, by the Howard County Board of Appeals, **ORDERED:**

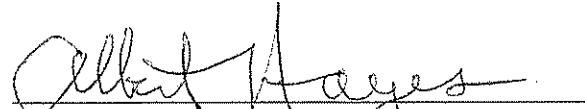
That the Petition of appeal of Owen Kelly, Carrigan Homes, Inc., in BA Case No. 621-D is **GRANTED**, subject to the following conditions:


1. The granted administrative adjustment shall apply solely to the proposed single-family detached dwelling as depicted on the administrative adjustment plan submitted by the Petitioner and not to any other structure, addition, building or use on the Property.
2. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

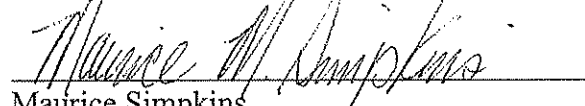

Ann Nicholson, Secretary


HOWARD COUNTY BOARD OF APPEALS

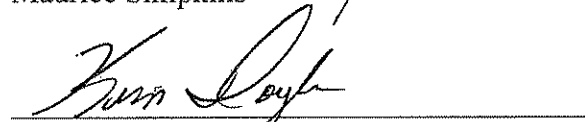

Albert Hayes, Chairperson

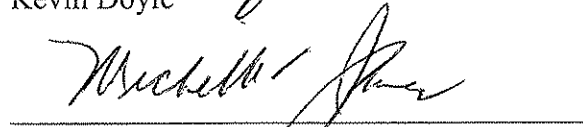

James Walsh, Vice-Chairperson

PREPARED BY:
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